

TOWN OF ROTTERDAM

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Town Attorney

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REGIONAL HEARING
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2016 FEB 25 AM 8:44
U.S. Environmental
Protection Agency-Reg 2

February 19, 2016

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: Formal Request for an Extension of Time to Answer "Notice of Proposed
Assessment of a Civil Penalty Class I
Town of Rotterdam Municipal Separate Storm Sewer System ("MS4")
Docket No. CWA-02-2016-3309

Dear Ms. Maples:

I am writing to you to formally request an additional forty five (45) day extension of time, pursuant to 40 C.F.R. 22.7, to file a formal answer in the above referenced proceeding. The town had a productive informal settlement conference on February 11, 2016, with Ms. Melva Hayden and Ms. Kimberly McEatheron. The call was originally scheduled for February 2, 2016 however, due to EPA counsel's unforeseen illness.

I respectfully request an additional forty five (45) day extension to meet with the town supervisor and town board members to seek the board's approval to pursue an eligible SEP project (to be determined and approved by EPA) to mitigate the penalty as part of a settlement of this matter. The next town board meeting is scheduled for February 25, 2016. I will then inform EPA whether the board has authorized the development of a SEP proposal for EPA's review and approval; or whether the Board declines to do a SEP and instead authorizes me to make a counter settlement offer to EPA. This requested extension of time will allow for these next steps outlined above. I may be reached at (518) 355-7575, extension 322 or via email at kmcguirl@rotterdamny.org. I look forward to your response.

Very truly yours,

Kate McGuirl
Town Attorney

cc: Ms. Melva Hayden, Assistant Regional Counsel, U.S. Environmental Protection Agency - Region 2

From: Hayden, Melva <Hayden.Melva@epa.gov>
Sent: Thursday, February 11, 2016 4:24 PM
To: Kate McGuirl
Cc: Mceathron, Kimberly; Modigliani, Justine; McKenna, Douglas; Feinmark, Phyllis
Subject: Summary of Action Items from Today's Informal Settlement Conference Call for Town of Rotterdam Docket No. CWA-02-2016-3309
Attachments: memo-nextgen-useinenfsettlements.pdf

Dear Ms. Guirl, et al

I wish to thank you and all of the participants for a very productive Call. As promised and as per my usual and customary practice below is a summary of the action items or deliverables agreed upon at today's Town of Rotterdam Informal Settlement Conference Call. Attached also is an e-copy of EPA's Next Generation ("Next Gen") Policy which may be helpful to you and your clients as you explore the possibility of performing a supplemental environmental project ("SEP") as a part of a settlement in this matter.

Summary of Action Items and Deliverables Agreed to on February 11, 2016 Informal Settlement Conference Call

- **Action Item/Deliverable for EPA** – M. Hayden will provide Ms. McGuirl a copy of EPA's Next General Policy for use in enforcement settlements. M. Hayden shared that EPA encourages Respondents to consider use of the Agency's Next Gen Policy to incorporate aspects of the Policy in its SEP proposal where possible. M. Hayden also suggested Ms. McGuirl may want to review and consider in particular the section on Environmental Management Systems ("EMS") in EPA's SEP Policy in its deliberations considering the performance of a SEP. Done. See Attachment.
- **Action Item/Deliverable for EPA** – M. Hayden has consented to the Town's technical consultant and Ms. McGuirl to communicate with K. McEathron during M. Hayden's absence (the first week in March) should the Town need to seek assistance from the program regarding the SEP proposal. M. Hayden should be copied on all such communications.
- **Action Item/Deliverable for Town** – K. McGuirl will submit a written request to a second extension of time to submit an Answer to the Complaint. M. Hayden suggested Ms. McGuirl may want to seek a 30 or 45 day extension from February 19, 2016 to give the Town enough time to explore the feasibility of performing a SEP; and/or to give the Parties time to reach a settlement and memorialize it in a settlement document, given the respective internal process required for EPA and the Town's Board to approve any such settlement. EPA will not object to the extension request. **(TBD)**
- **Action Item/Deliverable for Town** - K. McGuirl will meet with the Town Supervisor and Board Members to seek the Board's approval to pursue an eligible SEP project (to be determined and approved by EPA) to mitigate the penalty as part of a settlement of this matter. The Next Board Meeting has been scheduled for February 25, 2016. **(TBD)**
- **Action Item/Deliverable for Town** - As soon thereafter possible, Ms. McGuirl will inform EPA whether the Board has authorized Ms. McGuirl and the Town's consultants to pursue development of a SEP proposal for EPA's review and approval; or whether the Board declines to do a SEP and instead authorizes Ms. McGuirl to make a Counter Settlement offer to EPA. **(TBD)**

- **Action Item/Deliverable for EPA** – M. Hayden will send an email communication to Ms. McGuirl providing prospective dates after the first week of March for the Parties to schedule a follow-up settlement conference call to discuss the Town's SEP proposal or its counter offer.

Should your recollection of the action items or deliverables we discussed and agreed to during the Call differ from that of mine, please feel free to advise me or amend the summary accordingly.

Again, I wish to thank you and all the participants for a productive call. I look forward to continuing to work with you and other representatives of the Town to bring this matter to a final resolution.

Sincerely,

Melva J. Hayden

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Region 2 Title VI Coordinator
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U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866
212.637.3230 - EPA Office (Tues., Wed., Thurs.)
212. 637.3202 - EPA Facsimile
718.712.5674 - Alternate Work Location Number (Mon., Fri.)